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2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 UNITED STATES OF AMERICA,

Case Nos. 3:18-cr-00055-MMD-WGC
3:18-cr-00057-MMD-WGC

7 v. Plaintiff,

ORDER

8 JOSE VALENTIN MORA,

9 Defendant.

10
11 I. **SUMMARY**

12 Defendant Jose Valentin Mora is concurrently serving a 168-month sentence for
13 conspiracy to distribute methamphetamine (Case No. 3:18-cr-00057 ("Case No. 57")) and
14 a 60-month sentence for possession of a firearm by a prohibited person (Case No. 3:18-
15 cr-00055 ("Case No. 55")). (Case No. 57, ECF No. 713; Case No. 55, ECF No. 121.) He
16 is also sentenced to concurrent five years of supervised release in Case No. 57 and three
17 years of supervised release in Case No. 55. (*Id.*) Before the Court are Defendant's
18 motions¹ for sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). (Case No. 57, ECF
19 No. 916; Case No. 55, ECF No. 125 (jointly, "Motion").) Mora argues that there are
20 "extraordinary and compelling" reasons for reduction in his sentence because of unfair
21 discrepancies in methamphetamine sentencing guidelines, the ongoing COVID-19
22 pandemic, and the government's failure to honor his plea agreement. (Case No. 57, ECF
23 No. 916 at 1-2; Case No. 55, ECF No. 125 at 1-2.) Because Mora has not presented

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28 ¹Defendant submits the same motion in Case No. 57 and Case No. 55, and the
responses are the same across both cases. The Court thus issues this combined Order.
The government opposes Mora's release. (Case No. 57, ECF No. 922; Case No. 55, ECF
No. 127 (jointly, "Response").) Defendant did not file a reply, and the deadline to do so
has passed. For purposes of this Order, where the parties' arguments and filings are
common between cases, the Court will cite to the docket in Case No. 57.

1 extraordinary and compelling reasons within the meaning of the statute, and as further
 2 explained below, the Court will deny Mora's motion as to each case.²

3 **II. BACKGROUND**

4 On October 18, 2019, Defendant pled guilty to one count of conspiracy to possess
 5 methamphetamine with intent to distribute at least 50 grams of actual methamphetamine
 6 and 500 grams of a mixture and substance containing a detectable amount of
 7 methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), and 846.
 8 (Case No. 57, ECF Nos. 590, 601.) He admitted that he engaged in arrangements on
 9 numerous occasions in 2018 to sell large quantities of methamphetamine to co-
 10 conspirators. (Case No. 57, ECF No. 601 at 8-38.) Under a combined plea agreement,
 11 Mora pled guilty on the same day to one count of possession of a firearm by a prohibited
 12 person in violation of 21 U.S.C. §§ 922(g)(1) and 924(d). (Case No. 55, ECF Nos. 108,
 13 109 at 38-40.) He admitted that he knowingly possessed a Bersa Thunder .380 caliber
 14 pistol, while he also knew that he was a previously-convicted felon. (Case No. 55, ECF
 15 No. 109 at 38-40.)

16 On February 10, 2020, the Court sentenced Mora to 168 months in prison and five
 17 years of supervised release for the methamphetamine charge and 60 months in prison
 18 and three years of supervised release for the firearm charge. (Case No. 57, ECF Nos.
 19 710, 713; Case No. 55, ECF Nos. 120, 121.) The Court ordered the sentences to run
 20 concurrently. (*Id.*) At the time of this Order, Defendant has served approximately 64
 21 months out of his 168-month total sentence. (Case No. 57, ECF No. 922 at 1-2.) On May
 22 5, 2023, Defendant filed this *pro se* Motion seeking a reduction in his sentence to time
 23 served or, alternatively, to "around half of the total of his aggregate 168 month sentence."
 24 (ECF No. 916 at 18.)

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 27 ²Defendant also "[prays] that this Court will appoint him a lawyer" in moving for
 28 relief because he is a prisoner ill-versed in the law. (ECF No. 916 at 18.) Under the Court's
 General Order 2020-06, the Federal Public Defender for the District of Nevada reviewed
 Mora's Motion and filed a notice of non-supplementation because "it does not believe that
 any supplement is necessary." (ECF No. 919.)

1 **III. DISCUSSION**

2 Defendant seeks release under the compassionate release provision of 18 U.S.C.
 3 § 3582(c)(1)(A)(i), as amended by the First Step Act (“FSA”) of 2018. (Case No. 57, ECF
 4 No. 916.) This provision offers Defendant a limited exception to the general rule that the
 5 Court may not modify or reduce the length of a sentence after the Court has imposed it.
 6 See 18 U.S.C. § 3582(c); *see also U.S. v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003)
 7 (explaining that generally a court cannot modify a sentence after it has imposed it). “It
 8 allows the sentencing judge to reduce a sentence based on ‘extraordinary and compelling
 9 reasons’ after the defendant has asked the [Bureau of Prison (“BOP”)] to bring such a
 10 motion on her behalf and exhausted all administrative rights to appeal the BOP’s denial
 11 of that request.” *United States v. Mogavero*, Case No. 2:15-cr-74-JAD-NJK, 2020 WL
 12 1853754, at *2 (D. Nev. Apr. 13, 2020) (citing 18 U.S.C. § 3582(c)(1)(A)(i)).

13 The Court follows a three-step process to evaluate the Motion. First, the Court
 14 determines if Mora has satisfied the statutory prerequisites under Section 3582(c)(1)(A).
 15 Then, the Court evaluates whether Mora has shown “extraordinary and compelling
 16 reasons” for the Court to release him under Section 3582(c)(1)(A)(i). Finally, the Court
 17 addresses the applicable policy statements and sentencing factors under Section
 18 3582(c)(1)(A). The Court “must consider the factors in 18 U.S.C. § 3553(a) ‘to the extent
 19 that they are applicable,’ and any sentence reduction must be ‘consistent with applicable
 20 policy statements issued by the Sentencing Commission.’” 18 U.S.C. § 3582(c)(1)(A)(i).
 21 Here, there is no dispute regarding the first step. The Court will primarily address the
 22 second step, while also considering applicable policy statements, because the Court does
 23 not find extraordinary and compelling reasons exist that weigh in favor of granting Mora’s
 24 Motion.

25 **A. Statutory Prerequisites**

26 Section 3582(c)(1)(A) requires that a defendant ask the BOP to bring a motion for
 27 compassionate release on the defendant’s behalf before filing such a motion with the
 28 court, normally done by submitting a request to the warden. *See also* 18 U.S.C. §

1 3582(c)(1)(A). In addition, a defendant may only bring a motion under Section
 2 3582(c)(1)(A) “after the defendant has fully exhausted all administrative rights to appeal
 3 a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse
 4 of 30 days from the receipt of such a request by the warden of the defendant’s facility,
 5 whichever is earlier[.]” *Id.*

6 On February 22, 2023, Defendant submitted a request for compassionate release
 7 to the warden of the United States Penitentiary, Canaan (“USP Canaan”) and more than
 8 30 days had passed at the time the Motion was filed. (ECF No. 922 at 6.) “The government
 9 agrees that the defendant has exhausted his administrative remedies” (*Id.*) The Court
 10 thus proceeds to the other two steps of the analysis.

11 **B. Extraordinary and Compelling Reasons**

12 Mora argues that there are three extraordinary and compelling reasons for a
 13 reduction in his sentence: (1) his sentencing guideline calculation was inaccurate as to
 14 his methamphetamine charge and resulted in an artificially long sentence; (2) the COVID-
 15 19 pandemic has made prison conditions especially harsh; and (3) the government did
 16 not honor the terms of his plea agreement. (ECF No. 916 at 1-2.) The Court addresses
 17 each argument.

18 **1. Sentencing guideline calculation**

19 As “the primary basis for his compassionate release motion,” Mora argues that the
 20 sentencing guidelines applied to his methamphetamine charge (Case No. 57) were
 21 inaccurate because they reflect a faulty distinction between pure methamphetamine and
 22 methamphetamine mixture in assessing culpability. (ECF No. 916 at 5, 11-13.) See also
 23 U.S.S.G. §2D1.1(c). Mora argues that “[b]ecause he pled guilty to and the case involved
 24 a little over 5 kilograms of especially pure meth, the Guidelines indicated his base offense
 25 level to be 38” while “the same amount of meth mixture would have given him a base
 26 offense level of somewhere around 34.” (ECF No. 916 at 11.) This “resulted in Mora
 27 receiving additional months if not likely years in prison.” (*Id.*) Moreover, Mora argues that
 28 he would receive a shorter sentence today, if he were sentenced under more lenient

1 methamphetamine guidelines. (*Id.*) The government responds that the Court applied the
 2 correct guideline calculation at Mora's sentencing, given that he admitted to a conspiracy
 3 involving more than five kilograms of pure methamphetamine in his plea agreement, and
 4 that the guideline for that quantity remains the same today. (ECF Nos. 601, 922 at 7-8.)

5 The Court agrees with the government that the correct base offense level was
 6 applied at Mora's sentencing under Section 2D1.1(c) of the guidelines, which sets a base
 7 level of 38 for 4.5 kilograms or more of "actual" methamphetamine.³ Mora explicitly
 8 stipulated to a base offense level of 38 in his plea agreement. (ECF No. 601 at 41.) The
 9 Court recognizes developing case law suggesting that the methamphetamine guidelines'
 10 distinction between pure methamphetamine and methamphetamine mixture may be a
 11 relevant factor in assessing a downward variance at sentencing.⁴ See, e.g., *United States*
 12 *v. Hayes*, 948 F. Supp. 2d 1009, 1027 (N.D. Iowa 2013) (citing *United States v. Woody*,
 13 8:09-cr-382, 2010 WL 2884918, at *10 (D. Neb. July 20, 2010)). Here, however, the Court
 14 already granted a downward variance at Mora's sentencing—his guideline sentence
 15 range was 360-months-to-life imprisonment, and he received a sentence of 168 months.
 16 (ECF No. 601 at 8.) There is no evidence that Mora would have received a substantially
 17 different sentence today under unchanged guidelines.

18 The Court also agrees with the government that, to the extent a defendant's
 19 primary argument is that the applicable law has evolved, other channels of relief are
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21 ³The Sentencing Commission promulgated amendments to current sentencing
 22 guidelines on April 27, 2023. See U.S.S.C., Amendments to the Sentencing Guidelines,
 23 Apr. 27, 2023. These amendments will become effective on November 1, 2023, absent
 24 action by Congress to the contrary. See *id.* The amended guidelines do not alter the base
 25 offense level of 38 applied to 4.5 grams or more of actual methamphetamine, although
 26 they make changes regarding applicable reductions and enhancements. See U.S.S.G. §
 27 2D1.1(c), as amended.

28 ⁴The non-binding comments to the Sentencing Commission's 2023 promulgated
 29 amendments, however, emphasize that the Commission does not view a change in law
 30 as an independent extraordinary and compelling circumstance. See U.S.S.G. §1B1.13
 31 cmt. (c), as amended (providing that a change in the law "shall not be considered for
 32 determining whether an extraordinary or compelling reason exists . . . However, if a
 33 defendant otherwise establishes that extraordinary and compelling reasons warrant a
 34 sentence reduction" then "a change in the law . . . may be considered for purposes of
 35 determining the extent of any such reduction").

1 available. (ECF No. 922 at 7-8.) See 18 U.S.C. § 3582(c)(2) (providing that a defendant
 2 may pursue sentence modification, separate from a request from compassionate release
 3 under Section 3582(c)(1)(A), where the Sentencing Commission has subsequently
 4 lowered an applicable sentencing range). The Court accordingly finds that Mora's
 5 methamphetamine guideline calculation does not present any compelling or extraordinary
 6 reasons for sentence reduction.

7 **2. COVID-19 conditions**

8 Mora further argues that the COVID-19 pandemic has made prison confinement
 9 unusually harsh and punitive—itself an extraordinary and compelling circumstance. (ECF
 10 No. 916 at 13-14.) To prevail on the “extraordinary and compelling reasons” prong of the
 11 analysis based on COVID-19 conditions, a defendant generally must demonstrate
 12 personal health risk factors combined with public health circumstances that present
 13 particular risk. Mora must establish: (1) the combination of his age and underlying health
 14 conditions elevates his risk of becoming seriously ill were he to contract COVID-19 (the
 15 “Underlying Health Conditions Prong”); and (2) he faces greater risk from COVID-19 if he
 16 continues to be housed at his current facility instead of being released (the “Location
 17 Prong”). See, e.g., *U.S. v. Kauwe*, 467 F. Supp. 3d 940, 942-43 (D. Nev. June 3, 2020).⁵

18 Here, Mora has not presented any facts suggesting (1) that he suffers from any
 19 medical conditions that increase his risk of complications or death from COVID, or (2) that
 20 there is a current public health crisis at his facility. Mora focuses on COVID-19’s past
 21 impact on prison operations, including by increasing lockdowns and reducing visitation
 22 and other important prisoner activities. (ECF No. 916 at 13-14.) These concerns, while
 23 meaningful, are common to many prisoners in the BOP system and do not justify early

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 25 ⁵The Sentencing Commission’s 2023 promulgated and adopted amendments
 26 include new comments suggesting that an extraordinary and compelling reason for early
 27 release exists where the defendant “is housed at a correctional facility affected or at
 28 imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an
 ongoing public health emergency declared by the appropriate federal, state, or local
 authority” and “due to personal health risk factors and custodial status” that defendant is
 at increased risk of severe medical complications or death,” and “such risk cannot be
 adequately mitigated in a timely manner.” U.S.S.G. §1B1.13 cmt. (b)(1)(D)(i)-(iii), as
 amended.

1 release in Mora's particular case. The Court further agrees with the government that, even
 2 if Mora could present an extraordinary and compelling reason for release at the beginning
 3 of the pandemic, current operations have largely returned to pre-pandemic standards
 4 following the availability of vaccines. (ECF No. 922 at 9.) COVID-19 conditions do not
 5 justify release or sentence reduction at this juncture.

6 **3. Plea agreement terms**

7 Finally, Mora argues that his sentence should be reduced because his defense
 8 counsel and the government did not honor the terms of his guilty plea. (ECF No. 916 at
 9 14-15.) Mora contends that he told his lawyer that he would plead guilty to the firearm
 10 charge if the government released his nephew from custody, and that there was limited
 11 independent evidence linking him to the gun. (*Id.*) Here, the Court agrees with the
 12 government that a motion for sentence reduction is not the appropriate avenue for
 13 adjudicating this legal theory, which could be raised on appeal or through collateral attack
 14 to the extent not barred by the terms of the plea agreement. (ECF No. 922 at 2.) In
 15 addition, the plea agreement does not include any language with such a promise from the
 16 government. (ECF No. 601.) See *United States v. Jackson*, 21 F.4th 1205, 1213 (9th Cir.
 17 2022) (noting that courts "generally limit [their] review to the terms of the written plea
 18 agreement and the statements made under oath during the plea colloquy" unless a
 19 defendant rebuts the presumption that the agreement is complete).

20 Moreover, importantly, the Court sentenced Mora to 60 months for his firearm
 21 possession charge (Case No. 55). (ECF No. 713.) At the time of this Order, Mora has
 22 been in custody for more than 60 months and is serving the remainder of his concurrent
 23 sentence for his methamphetamine charge, for which he received a 168-month sentence
 24 (Case No. 57.) (*Id.*) The Court thus finds that there is no extraordinary and compelling
 25 reason for sentence reduction stemming from Mora's guilty plea in his firearm case.
 26 Accordingly, because none of his stated justifications constitute extraordinary and
 27 compelling reasons under the meaning of Section 3582(c)(2), the Court will deny Mora's
 28 Motion.

1 **IV. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several
3 cases not discussed above. The Court has reviewed these arguments and cases and
4 determines that they do not warrant discussion as they do not affect the outcome of the
5 Motion before the Court.

6 It is therefore ordered that Mora's motion for sentence reduction (Case No. 57,
7 ECF No. 916; Case No. 55, ECF No.125) is denied as to both cases.

8 DATED THIS 4th Day of October 2023.

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11 MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE
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